

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

1:14-cv-1025 JB-JFR

THE CITY OF ALBUQUERQUE,

Defendant,

v.

**THE ALBUQUERQUE POLICE
OFFICERS' ASSOCIATION,**

Intervenor.

**NOTICE REGARDING THE TRANSITION OF THE INVESTIGATION OF ALL
NEW LEVEL 2 AND LEVEL 3 FORCE INVESTIGATIONS FROM THE EXTERNAL
FORCE INVESTIGATION TEAM BACK TO THE ALBUQUERQUE POLICE
DEPARTMENT'S INTERNAL AFFAIRS FORCE DIVISION**

Plaintiff United States of America and Defendant City of Albuquerque (collectively, the Parties), respectfully file this notice of their agreement, entered into with the consent of Intervenor Albuquerque Police Officers' Association (APOA), and approval of the External Force Investigation Team (EFIT) and Independent Monitor, to transition the investigation of all new Level 2 and Level 3 force investigations back to the Albuquerque Police Department (APD), Internal Affairs Force Division (IAFD), and end EFIT's mandate to assist APD in conducting investigations of Level 2 and Level 3 uses of force. *See* Doc. 720, at 1. The specific steps in the transition are laid out in Exhibit A, IAFD-EFIT Transition, Oct. 30, 2023. As a result, the only remaining operative provisions of the Amended Stipulated Order Establishing EFIT will be in

relation to EFIT's mandate to investigate the 667 cases in the backlog, of which 227 remain. *See* Doc. 906, ¶¶ 7–11.

THE AMENDED EFIT ORDER

On March 21, 2022, this Court entered an order amending a prior order from February 2021 that established EFIT, on a temporary basis, to assist APD in investigating Level 2 and Level 3 uses of force and to improve the quality of force investigations conducted by IAFD. *See id.* at 1. The Amended Order authorized EFIT to conduct joint investigations of new Level 2 and Level 3 uses of force as well as to independently conduct investigations of backlogged cases from January 1, 2020, to January 16, 2021. *See id.* The team supporting IAFD on current investigations is referred to as “EFIT-1” and the team investigating the backlog is “EFIT-2.”

The Amended Order contains several requirements of IAFD and EFIT-1. First, Paragraph 12 imposes a minimum staffing requirement for IAFD. It provides:

The City shall ensure that APD maintains at least twenty-five (25) force investigators assigned to IAFD, unless and until APD can demonstrate by an internal staffing analysis that fewer investigators are necessary to timely investigate all Level 2 and Level 3 uses of force.

Doc. 906, ¶ 12.

With one limited exception, the City has complied with the requirement to employ at least 25 investigators in IAFD since August 2021. *See* Doc. 1000-1, at 7. Although the City currently employs 25 investigators in IAFD, a recent staffing study conducted by APD indicates that only 19 investigators are needed to timely investigate all Level 2 and Level 3 uses of force, given IAFD's current case load. *See* Exhibit B, Staffing Study. This is due in part to IAFD's caseload decreasing by about 25% because of the decrease in Level 2 and Level 3 uses of force by APD officers and the recategorization of certain types of force from Level 2 to Level 1. *See* Doc. 990, IMR-17, at 25.

The City has also complied with the other provisions of the Amended Order regarding EFIT-1. Paragraph 13 of the Order requires the City to develop a process narrative which details steps that IAFD must follow in each investigation of Level 2 and Level 3 force events. The most recent process narrative is Doc. 989, filed on April 21, 2023. Between March and May 2023, IAFD was 100% compliant with the process narrative. *See* Doc. 1000-1, at 2.

Paragraph 22 of the Amended Order provides EFIT-1 with the authority to complete investigations and supervisory reviews without IAFD's involvement in two circumstances: First, if necessary to comply with mandatory deadlines under the CASA, and second, if IAFD personnel committed misconduct during the investigation and their continued participation is likely to undermine the integrity of the investigation. However, EFIT-1 has not assumed any cases pursuant to this authority since August 2022. *See* Doc. 995, at 1

Paragraphs 33 and 34 of the Amended Order lay out standards for transferring responsibility for conducting full investigations of Level 2 and Level 3 uses of force from EFIT to individual IAFD personnel, who would then conduct force investigations without EFIT-1's oversight and input. The Parties and EFIT developed a detailed transition process that aligns with the standards set out in the Amended Order. *See* Doc. 928-1, at 5. As of the date of this filing, nine current IAFD personnel have "graduated" from EFIT's transition process and now conduct investigations without EFIT oversight.¹

THE TRANSITION PLAN

The Amended Order anticipated that full responsibility for conducting Level 2 and Level 3 use of force investigations would return to APD over time, with a goal of responsibility returning

¹ Three (3) additional individuals have graduated the EFIT transition process but are no longer assigned as investigators in IAFD.

entirely to APD by March 2024. *See* Doc. 106 ¶¶ 36-37.² The City satisfied the requirements of the Amended Order related to EFIT-1, but the Amended Order cannot be terminated until EFIT-2 has completed investigations of the backlog. *See* Doc. 906 ¶ 38. Therefore, EFIT and APD have moved forward on the transition plan attached to this Joint Notice for new Level 2 and Level 3 force investigations. *See* Exhibit A, IAFD-EFIT Transition Plan. The transition plan has six components designed to ensure that IAFD can continue to complete investigations in a timely, thorough, and fair manner, as it has done for more than a year with EFIT-1's assistance.

First, IAFD created a division manual and orientation program for new IAFD investigators. *See* Exhibit C, IAFD Manual. The Independent Monitor and EFIT reviewed a draft of the manual and provided feedback, which IAFD incorporated into the final version. The manual and orientation program will help IAFD ameliorate the consequences of turnover and ensure that IAFD has an adequate number of trained personnel to complete Level 2 and Level 3 force investigations within the timelines required by the City's collective bargaining agreement with APOA.

Second, IAFD implemented a Field Training Officer (FTO) program for IAFD investigators who are new or in need of additional support. IAFD worked closely with the EFIT Executive Team in designing the FTO program. This on-the-job training model pairs experienced IAFD personnel with newer IAFD personnel to replicate EFIT-1's similar function. EFIT-1 remained in Albuquerque working with IAFD through December 5, 2023, focusing primarily on the eight IAFD investigators in Phase 0 to Phase 3 of the EFIT-1 graduation process. EFIT-1 identified areas of improvement for IAFD personnel and worked with them and their direct

² The Amended Order states that "[t]he City will endeavor to ensure that the responsibility for conducting full investigations of Level 2 and Level 3 uses of force returns entirely to APD within 24 months of that date this Amended Order is entered as a Court order." Doc. 906 ¶ 37. The Court entered the Amended Order on March 21, 2022. *See id.*

supervisor to increase their capabilities. IAFD personnel identified as needing additional training will be placed in Phase 3 of the FTO program. On December 5, EFIT-1 investigators transitioned to the EFIT-2 team investigating the backlog of force cases.

Third, IAFD developed a rubric for evaluating whether the initial investigation and the supervisor's review comply with APD policy and the CASA. The rubric is attached as Exhibit D. The Independent Monitor and EFIT reviewed the rubric and provided feedback, which IAFD incorporated into the final version. IAFD also created a dashboard for tracking cases and performance of investigators and supervisors. This tool assesses IAFD personnel at various critical stages of investigations to ensure compliance with the process narrative and timelines, which enables APD to identify and address problematic trends before they become endemic.

Fourth, APD staffed an IAFD Deputy Commander as Quality Control Manager (QCM) to ensure consistency amongst commanding officer reviews, replicating the EFIT Executive Team's similar function. EFIT provided the QCM technical assistance as he began this new role, and the transition plan provides for a gradual reduction in EFIT's technical assistance over time. At first the QCM and EFIT jointly reviewed IAFD investigations, with EFIT closing the investigations after that review. Then the QCM reviewed cases on his own, with EFIT still responsible for closing each investigation. At present, the QCM is closing investigations without EFIT's involvement, though EFIT randomly samples closed investigations on a weekly basis, as a further quality control measure. EFIT's review of randomly sampled investigations will end early in 2024. See Exhibit A, IAFD-EFIT Transition.

Fifth, the EFIT Executive Team will remain available to assist IAFD with new Level 2 and Level 3 force investigations at APD's request. EFIT Administrator Darryl Neier will remain on-site in Albuquerque through EFIT-2's completion of the backlog, which will trigger the

termination of the Amended Order, which the Parties anticipate will occur in May 2024. The other members of the EFIT Executive Team, Darriel Bone and Bill Hurlock, will be available for meetings and/or visits to Albuquerque, at APD's request.

Sixth, APD will continue to regularly document IAFD's work to train personnel and complete investigations within timelines. APD will send DOJ and EFIT an IAFD weekly report and an FTO program weekly observation report. The Independent Monitor will continue to assess APD's compliance with Paragraphs 60–77, which address the timeliness and quality of Level 2 and Level 3 force investigations.

For these reasons, the Parties agree that a phased disengagement approach for EFIT-1 to transition to IAFD full responsibilities for Level 2 and Level 3 force investigations is appropriate. IAFD has demonstrated its capacity to complete investigations in a timely, thorough, and fair manner. IAFD has also set up systems to independently train, mentor, and oversee personnel going forward. Returning the responsibility for Level 2 and Level 3 force investigations back to APD while EFIT continues working on the backlog also provides the Parties, the Monitor, the Court, and the public an opportunity to evaluate the efficacy of APD's systems for investigating force, with a backstop still available if it is needed.

WHEREFORE, the Parties, with the consent of the Intervenor and the approval of EFIT and the Independent Monitor, respectfully submit this Notice of the Parties' agreement to transition the investigation of all new Level 2 and Level 3 force investigations back to APD's IAFD and end the EFIT-1 mandate pursuant to a phased disengagement approach.

Respectfully submitted December 18, 2023,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2023, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel and the Independent Monitor to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Ruth F. Keegan

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